

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

MIDLAND/ODESSA DIVISION

DOLLAR TREE STORES, INC.

Plaintiff,

v.

WMSC LLC

Defendant.

Civil Docket No. _____

COMPLAINT

COMES NOW, Plaintiff DOLLAR TREE STORES, INC. (“Dollar Tree”), by and through its attorneys, FOX ROTHSCHILD LLP, and files this Complaint against Defendant WMSC LLC (“WMSC”). In support hereof, Dollar Tree would respectfully show the Court the following:

THE PARTIES

1. Dollar Tree is a Virginia corporation that is qualified as a foreign corporation authorized to do business in the State of Texas. Dollar Tree’s principal place of business is 500 Volvo Parkway, Chesapeake, Virginia 23320.

2. WMSC, LLC is a Texas limited liability company, whose principal office is located in 1601 Palomino Ridge, Dr., Austin, TX 78733. Defendant may be served with process by serving its registered agent, Todd Routh, at 1601 Palomino Ridge, Dr., Austin, TX 78733.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the lawsuit under 28 U.S.C. §§ 1332(a)(1) because Plaintiff and Defendant are citizens of different U.S. states, and the amount in controversy exceeds \$75,000, excluding interest and costs. WMSC is a Texas limited liability company with its principal place of business in Texas. Based on information and belief, the member/manager of WMSC is Todd Routh, who resides in Texas and who is a citizen of Texas. Dollar Tree is a Virginia corporation with its principal place of business in Virginia. Therefore, there is complete diversity. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the property in question is located in Ector County, Texas, and Ector County is where a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL BACKGROUND

4. Pursuant to the Lease Agreement by and between WMSC, as landlord, and Dollar Tree, as tenant, dated July 5, 2019 (the “Lease”), Dollar Tree agreed to lease approximately 9,398 square feet of property situated at 3120 Andrews Highway, Odessa, Texas 79762 (the “Premises”).

5. Pursuant to Sections D.1.a and D.1.b of the Lease, the landlord agreed to complete the Delivery Conditions as set forth therein, as well as to build-out the Premises in accordance with applicable code and Dollar Tree’s Construction Criteria, which were annexed as an exhibit to the Lease, and deliver the Premises on the Anticipated Delivery Date of September 15, 2019.

6. If the landlord has not delivered the Premises within ten days following the Anticipated Delivery Date, Section D.1.e of the Lease entitles Dollar Tree to terminate the Lease or to charge as liquidated damages a late fee equal to \$1,000.00 per day for each day that elapses between the Anticipated Delivery Date and the first to occur of the Delivery Date and the date Dollar Tree opens for business in the Premises (“Late Fee”).

7. WMSC acknowledged that the Late Fee would be substantially less than actual damages that Dollar Tree would incur if the Premises was not delivered on the Anticipated Delivery Date, including contractor and professional fees, mobilization and re-mobilization expenses, and other consequences of a delayed store opening.

8. WMSC also acknowledged that the Late Fee was agreed upon based upon arms-length negotiations and that any such Late Fee does not constitute a penalty.

9. Pursuant to Section D.1.e of the Lease, the Late Fee is due and payable within thirty days following the landlord's receipt of Dollar Tree's invoice therefor and if the landlord fails to pay the Late fee prior to the expiration of such thirty day period, Dollar Tree has the right to offset the entire Late Fee, together with interest at a rate of 12% per annum from the expiration of such thirty day period until paid, by taking a credit against 100% of Rent due to landlord under the Lease.

BREACH OF THE LEASE

10. Dollar Tree re-alleges the allegations contained in the previous paragraphs above and incorporates them by reference as if fully set forth herein.

11. WMSC failed to deliver the Premises with all Delivery Conditions satisfied until December 30, 2019.

12. Dollar Tree did not open for business to the public in the Premises until March 12, 2020.

13. WMSC was 106 days late in delivering the Premises to Dollar Tree with all Delivery Conditions satisfied.

14. WMSC breached the Lease because it failed to complete the Delivery Conditions by the Anticipated Delivery Date, and Dollar Tree is entitled to Late Fees in the amount of

\$106,000.00 as a result thereof. In the alternative, or in addition to the Late Fees, Dollar Tree is entitled to actual damages as a result of WMSC breaching the Lease by failing to complete the Delivery Conditions by the Anticipated Delivery Date, such damages exceeding \$106,000.00 and to be proved up at trial.

15. On or about March 23, 2020, Dollar Tree sent WMSC a notice of the Late Fee and invoice with demand for payment of the same within thirty days of the date of the notice.

16. Despite receiving the foregoing demand, WMSC has failed to pay Dollar Tree any portion of the Late Fee owed.

17. As a result of WMSC's breach, Dollar Tree is entitled to recover its reasonable and necessary attorney's fees as provided for in the lease.

PRAYER

WHEREFORE, Dollar Tree respectfully requests that this Court enter judgment against WMSC as follows:

- a. Awarding Dollar Tree monetary damages in the amount of \$106,000.00;
- b. Awarding Dollar Tree any further actual damages exceeding \$106,000.00, and to be proved up at trial;
- c. Awarding Dollar Tree its attorney's fees, expenses, interest, and other costs in this action to the extent permitted by law; and
- d. Such other relief that this Court deems just and proper.

Respectfully submitted,

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